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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,847	09/30/2003	Frederick James Diggle III	BE1-0029US	6863

49584 7590 02/10/2006

LEE & HAYES, PLLC
421 W. RIVERSIDE AVE.
SUITE 500
SPOKANE, WA 99201

EXAMINER

THOMPSON, HUGH B

ART UNIT PAPER NUMBER

3634

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,847

Applicant(s)

DIGGLE ET AL.

Examiner

Hugh B. Thompson II

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input checked="" type="checkbox"/> Other: <u>Figure 5</u> |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-15, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Shay #6,148,959. Shay, as best seen in Figures 1, 3, 5, and 7, discloses a gaff assembly comprised of a padded upper vertical portion having convex and concave surfaces, lower horizontal portions A, 20, 30, 40, all protecting portions of a user's foot area, gaff/hook K, S, G, spike T, strap/belt assembly U, and a plurality of fasteners 12, (some unnumbered) seen in Figure 5, and as recited in column 8, lines 64-65, the fasteners can be VELCRO.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shay as applied to claims 1-4, 6-15, and 17-20 above, and further in view of Arai #4,903,349. Shay fails to disclose magnetic fasteners. Arai, as best seen in Figures 4 and 5, teaches the utility of magnetic fasteners 6a, 6b, used to secure a strap assembly (retaining elements) 1, 2, in a fixed

Art Unit: 3634

position. Therefore, to one of ordinary skill in the art, it would have been obvious, as a matter of engineering design choice, to provide the gaff assembly of Shay with magnetic fasteners as taught by Arai, so as to provide a means for securing a strap or other retaining element in a fixed position, while producing no new and unexpected results.

Response to Arguments

Applicant's arguments filed in the Amendment of 11-21-05 have been fully considered but they are not persuasive. Applicant's attention is drawn to sheet 2 of 3 of the Shay reference attached hereto. In an attempt to more clearly define the Examiners "reading" of the Shay reference, Figure 5 has been labeled with identifiers. The "intended use" of the gaff guard of the Shay reference is not within the scope of the claims, nor is the "intended use" of instant invention. The applicant needs to rely upon the structure of the instant invention and perhaps "attempt" to better define the invention over the Shay reference instead of arguing intended use among other things. With reference to the horizontal portion, the applicant should note that the recitation "sized to receive and protect at least a portion of a foot" is a relative term that imparts no type of patentably distinct features to the instant invention. The portions that the Examiner refers to as horizontal portions need only be horizontal in orientation to anticipate the claim language. Its relationship to an "unclaimed foot" is irrelevant. If the applicant feels that the horizontal portions, which are "claimed", are structurally different than the disclosed horizontal portions of Shay, then those structural differences should be "clearly set forth" in the claims and not "argued" in the remarks. For example, the applicant could recite some sort of rigid L-shaped pad. As for the "removably positionable" argument, Shay in Figure 5, clearly disclose vertical

Art Unit: 3634

adjustment means for the shield. If the applicant feels that the structure that allows the shield of the instant invention to be "removably positionable" is somehow different than the disclosed vertical adjustment means of Shay, then those structural differences should be "clearly set forth" in the claims and not "argued" in the remarks. For example, the applicant could recite loops 275 as being slidable along the portion 236, thus permitting vertical adjustment of the upper portion of the shield. Absent such recitations, the rejection anticipated by the Shay reference is deemed proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson II whose telephone number is (571) 272-6837. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

Art Unit: 3634

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hugh B. Thompson II
Primary Examiner
Art Unit 3634

February 4, 2006

